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国家管辖范围以外区域的环境影响评价
制度研究

Study on the Environmental Impact Assessment System in
Areas beyond National Jurisdiction

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摘 要

随着全世界人口的不断增长,陆地资源的不断耗竭,陆地空间已经无法满足人类的发展需要,人类的生存与发展越来越依赖于海洋,世界各国纷纷把目光投向了海洋。另外,随着科学技术的不断发展,人类开发利用海洋的能力得到了显著的提高,人类在海洋的足迹开始从近岸浅海延伸向大洋深处。进入 21 世纪,人类开发利用海洋的程度达到了前所未有的高度。由于人类活动的增加,海洋环境、海洋生物及其生态系统正承受着巨大的压力。伴随着人类在国家管辖范围以外区域活动的增加,国际社会开始关注国家管辖范围以外区域的海洋生物多样性保护问题。国家管辖范围以外区域的海洋生物多样性养护与可持续利用问题已经成为全世界共同关注的一个焦点。

环境影响评价作为环境保护的一种预防性的措施,同样是解决国家管辖范围以外区域的海洋生物多样性的养护和可持续利用问题的一个非常重要的工具。自从上世纪六十年代美国提出环境影响评价的概念以来,国家管辖范围以内区域的环境评价制度得到了很好地发展和完善。但是,国家管辖范围以外区域的环境影响评价问题还是一个全新的研究领域。目前,不论是《联合国海洋法公约》、《生物多样性公约》还是其他的国际性或是区域性海洋环境保护公约都没有对国家管辖范围以外区域的环境影响评价问题做出明确的规定,现有的国际法律框架并未形成一个完整的制度体系。因此,国际社会特别是发展中国家迫切需要完善国家管辖范围以外区域的环境影响评价制度,确保环境影响评价制度在国家管辖范围以外区域得到有效地实施,从而在一定程度上约束发达国家的活动,制约发达国家在国家管辖范围以外区域的资源掠夺,维护发展中国家的利益,确保海洋生物多样性的养护与可持续利用。因此,对国家管辖范围以外区域的环境影响评价制度进行研究不仅具有学术价值,而且具有重大的现实意义,可以为我国在参与国际讨论和谈判时提供依据。

本文通过总结各方的观点,在分析现有的国家管辖范围以外区域的环境影响评价制度的基础上,提出完善现有的制度措施以及我国在这一问题上的策略选择。本论文的主要内容和结论如下:

(1) 总结国内外关于国家管辖范围以外区域的环境影响评价的研究进展。包括国家管辖范围外区域的海洋生物多样性养护与可持续利用相关问题的不限

成员名额非正式特设小组历次会议中关于环境影响评价的观点,以及国内外学者在这一问题上所持有的学术观点。国际社会肯定了环境影响评价在养护和可持续利用海洋生物多样性方面所起的作用。但是,国家管辖范围以外区域的环境影响评价在法律和技术层面上都存在着许多亟待解决的问题。识别发生在国家管辖范围以外区域的人类活动的类型。分析这些活动对海洋生物多样性和海洋生态系统的影响,考虑海洋特殊环境,然后对活动影响的大小进行量级的划分,从而明确进行环境影响评价的必要性。国家管辖范围以外区域不同的人类活动对海洋生态系统造成不同程度的影响,其中渔业和矿产资源的勘探开发活动造成的影响最大。因此,为了保护海洋生物多样性有必要对国家管辖范围以外区域的人类活动进行环境影响评价。

(2) 从全球、区域和专项性三个层次分析现有的国家管辖范围以外区域的环境影响评价制度,各国执行这些国际文书的具体情况,从而识别现有的制度在法律文书的执行、技术层面、国际交流与合作等方面存在着问题。

(3) 国家管辖范围以外区域的环境影响评价制度的完善措施有:一方面通过强化国内实施机制即国内立法、实施国家责任制度以及引入对世义务来加强现有的关于国家管辖范围以外区域环境影响评价的法律文书执行。另一方面则是在《联合国海洋法公约》的框架内,以现有的制度为基础,建立新的全球性的并具有法律约束力的制度体系。在构建新的制度体系时主要通过明确进行环境影响评价的活动、成立新的全球性的机构和能力建设这三个方面加以阐述。

(4) 从我国的国情出发,提出了我国在国家管辖范围以外区域的环境影响评价问题上的策略选择。应对措施主要有加强科学研究,启动国家管辖范围以外区域的环境影响评价立法程序和加强国际合作。

关键词: 国家管辖范围以外区域; 环境影响评价; 制度; 海洋生物多样性; 人类活动

Abstract

As the world's population growing and the depletion of land resources, the land has been unable to meet the development of human beings. The survival and development of human beings is becoming increasingly dependent on the ocean, countries around the world have set their sights on the ocean. Besides, with the increasingly development of science technology, the capability to exploit and utilize the ocean has been significantly improved, the footprint of human beings in the ocean has extended from inshore to deep sea. When it comes to 21st Century, the extent of exploitation and utilization of the ocean has reached an unprecedented level. Due to the increase of anthropological activities, marine environment, marine organism and marine ecosystem are suffering from tremendous pressure. The international community is paying increasingly attention on the issue of protecting marine environment and marine biodiversity in areas beyond national jurisdiction with the increase of anthropological activities in areas beyond national jurisdiction. The issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction have become a common focus in the world.

As a preventive measure, environmental impact assessment is a very important tool to solve the issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. Since America proposed the concept of environmental impact assessment in 1960s, the system of environmental impact assessment in areas under national jurisdiction has developed very well. But environmental impact assessment in areas beyond national jurisdiction is still a new research field. Currently, whether the United Nation Convention on the law of the sea, the Convention on Biological Diversity or other international or regional marine environmental protection conventions have not made specific provision for environmental impact assessment in areas beyond national jurisdiction. The existing framework for environmental impact assessment in areas beyond national jurisdiction has not yet formed a complete system. The international community especially the developing countries urgently need to improve the system of environmental impact

assessment in areas beyond national jurisdiction to ensure it can be implemented effectively. Thus it can constrain the activities of developed countries and resources plunderer in areas beyond national jurisdiction in some extent, safeguard the interest of developing countries and ensure conservation and sustainable use of marine biodiversity. So it not only has academic value but also has great practical significance to study the system of environmental impact assessment in areas beyond national jurisdiction. Besides, it can provide a basis for Chinese participation in international discussions and negotiations.

This thesis reviewed the view of environmental impact assessment in areas beyond national jurisdiction, proposed measures to improve existing system and countermeasure of China in the basis of analyzing the existing system of environmental impact assessment in areas beyond national jurisdiction. The main content and conclusions of this paper are following that:

Firstly, international and domestic research progress on environmental impact assessment in areas beyond national jurisdiction was reviewed. The international community confirmed the role of environmental impact assessment in conservation and sustainable use of marine biodiversity. But there were a lot of issues relating to law and technology should be solved for environmental impact assessment in areas beyond national jurisdiction. The patterns of anthropological activities happened in areas beyond national jurisdiction and their impacts to marine biodiversity and marine ecosystem considering specific marine environment were identified. The conclusion of the analysis was that different activities could cause impacts in different extents. The impacts of fishery and exploration and exploitation of deep sea minerals were most significant. Therefore, it is necessity to conduct environmental impact assessment for anthropological activities in areas beyond national jurisdiction in order to protect marine biodiversity.

Secondly, this thesis analyzed on the current system of environmental impact assessment in areas beyond national jurisdiction through three levels which are global, regional and sector-specific instruments. It found that the existing system had many problems in the implementation of instruments, technical level, international exchange

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